

OGC Has Reviewed

Assistant Director, OGC

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Legal Staff

**Death and Disability Payments for Alien Trainees**

1. This memorandum represents an attempt to list all compensation payable for the death or disability of an alien trainee resulting from personal injury sustained while in the performance of his duty, provided the injury or death is not caused by the willful misconduct of the trainee, or by the trainee's intention to bring about the injury or death of himself or of another, or by intoxication of the trainee.
2. The fact that a trainee is an alien is not of paramount importance in this question. As long as he is an "employee" of the United States, he is entitled to the benefits of the Federal Employees' Compensation Act. For the purposes of the aforementioned legislation, an "employee" includes all civil officers and employees of all branches of the United States Government (including officers and employees of instrumentalities of the United States wholly owned by the United States), as well as persons rendering personal services, without compensation or for nominal compensation, in any case in which acceptance or use of such services is authorized by law.
3. It is equally apparent that classifying an alien as a "trainee" does not prevent his status from being that of an "employee." As long as an employer-employee relationship is present, the Bureau of Employees' Compensation will accord the benefits due an employee.
4. From a legal standpoint, there are numerous factors which must be considered in determining whether a trainee is an "employee." Each case should be determined on its own merits, but each trainee would seem to fall into one of the following three general categories:
  - a. Trainees who legally are "employees" and hence entitled to full benefits of the FECA.
  - b. Trainees who clearly are not "employees," but to whom we may wish to award benefits. While it would be possible to award such trainees nothing, this may not be advisable for policy reasons. Also, as a practical matter, experience indicates that claims will be made regardless. Therefore, it may be advisable to agree to award certain benefits, perhaps an amount equal to some fraction of the FECA benefits.
  - c. Trainees who are "independent contractors." Generally, an "independent contractor" is one who undertakes to accomplish a given result, according to his own methods, and without being subject to the control of another. It is possible that certain alien trainees will fall into this category. "Independent contractors" are not automatically entitled to any benefits, as employees are through their status, and this is true under the FECA. Whether such persons should be awarded benefits by contract is a matter of policy.

5. The second broad category would consist of those persons whose rights are derived solely from their contract of employment with CIA. Here we must look to the individual's personal contract and if the appropriate benefits are not contained therein, the contract should either be amended, or a waiver obtained prior to the inception of training. Here again, of course, where the individual is entitled to U. S. Armed Service benefits, and security considerations do not make them unavailable, resort to private sources is unnecessary except in emergency.

6. We come, then, to those cases where the person is neither a member of the U. S. Armed Services nor related to the Agency through employment status or contract. These may be observers or active participants who have access to the training for purposes of representation or advice. They will probably consist of: (a) persons receiving compensation solely from sources outside the U. S. Government; (b) inventors or consultants whose relationship to the Government depends upon professional rather than operational services and who enjoy no employment benefits through contract; and (c) members of foreign governments or military services.

7. The preferable approach to the groups mentioned in paragraph 6 is, of course, to obtain a waiver if it is consistent with purposes of representation and the particular operational relationship with the individual concerned. We understand that even a request for a waiver may be inadvisable in certain cases and may be refused by the individual in others. If the waiver cannot be obtained, then we should secure some form of agreement containing a limitation of liability by the U. S. Government. (Under the Federal Tort Claims Act, the Agency has authority to settle claims not exceeding \$1,000, and the claimant has access to the courts for claims in excess of that amount. However, such claims are founded only upon negligence and cannot be recognized unless some fault on the part of a U. S. employee exists.) If a foreign individual's presence is requested by his government, we believe it would be advisable at the time of the request to reach an understanding with the foreign government that it will assume any expenses incidental to injury. The same approach should be taken when we request the presence of the individual. If the foreign government declines to accept responsibility in either event, we should attempt to obtain a waiver or limitation of liability from the individual. Unfortunately, we do not believe that the procedure in regard to the people in paragraph 6 is susceptible to comprehensive and precise standards. However, we can take action along the general lines indicated, and, in specific cases, we will be very pleased to advise you of the legal implications of the particular problem presented.

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cc: Subject

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